



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

BJG

Docket No: 6869-99

25 July 2000

MAJ [REDACTED] SMCR

Dear Major [REDACTED]:

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 25 July 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the reports of the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB) in your case, dated 2 November 1999 and 7 June 2000, and the advisory opinions from the HQMC Officer Career Counseling and Evaluation Section, Officer Assignment Branch, Personnel Management Division (MMOA-4), dated 9 December 1999 and 28 April 2000, copies of which are attached. They also considered your rebuttal letters dated 30 March and 16 July 2000, each with enclosures.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board substantially concurred with the comments contained in the reports of the PERB in finding that no correction of your fitness report record was warranted.

Specifically regarding the contested fitness report for 1 November 1991 to 20 April 1992, the Board did not find it unjust that you were evaluated by a reporting senior who had less experience as a defense counsel than you. They did not find the marks in this report inconsistent with the favorable comments. They were unable to find a personality conflict between you and the reporting senior, noting that you offered no proof of such a conflict. They noted that in any case, a subordinate has an obligation to get along with superiors.

Finally, the statement dated 30 March 2000 from a major, United States Marine Corps Reserve did not persuade them that this fitness report was erroneous or unjust.

Concerning the fitness report at issue for 21 April to 13 July 1992, the Board found that your later more favorable fitness reports did not invalidate it. They found no support for your assertion that your relationship with the reporting senior for the prior contested fitness report biased the reporting senior who submitted the report ending 13 July 1992.

Since the Board found no defect in your performance record, they had no basis to remove your failures by the Fiscal Year 1998 and 1999 Major Selection Boards, or to nominate you for a commission as a major in the Regular Marine Corps.

In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER  
Executive Director

Enclosures



DEPARTMENT OF THE NAVY  
HEADQUARTERS UNITED STATES MARINE CORPS  
3280 RUSSELL ROAD  
QUANTICO, VIRGINIA 22134-5103

6869-99

IN REPLY REFER TO:  
1610  
MMER/PERB  
NOV 2 1999

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
NAVAL RECORDS

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)  
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF MAJOR  
[REDACTED] USMCR

Ref: (a) [REDACTED]'s DD Form 149 of 5 Aug 99  
(b) MCO P1610.7C w/Ch 1-5  
(c) MCO P1610.7C w/Ch 1-6

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 27 October 1999 to consider [REDACTED] petition contained in reference (a). Removal of the following fitness reports was requested:

- a. Report A - 911101 to 920420 (CH) -- Reference (b) applies
- b. Report B - 920421 to 920713 (CH) -- Reference (c) applies

2. The petitioner contends that both reports are biased, prejudicial, in error, inaccurate, unfair, and unjust assessments of his overall performance. He also points out that in each the Reporting Seniors and Reviewing Officers contrast in their respective evaluations/comments. To support his appeal, the petitioner furnishes his own detailed statement and a letter from [REDACTED], USMCR.

3. In its proceedings, the PERB concluded that both reports are administratively correct and procedurally complete as written and filed. The following is offered as relevant:

a. At the outset, the Board emphasizes that in attempting to argue his case, the petitioner has cited the incorrect performance evaluation directive. MCO P1610.7D (the order to which he refers) did not become effective until 1 April 1995 -- almost three years after the fact. Hence, it has no bearing on the fitness reports at issue.

b. When the petitioner signed Item 22 of both reports, he attested to the accuracy of the data contained in Section A. That information included, but was not limited to, identification of the reporting officials of record. With specific regard to Report A, the petitioner acknowledged Captain [REDACTED] (an officer of the same grade) as his correct Reporting Senior. While the

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 ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF MAJOR  
 M [REDACTED] USMCR

Reviewing Officer did not directly address the issue, Captain [REDACTED] as filling a leadership billet, responsible for all activities of the unit and similar to that associated with an Officer-in-Charge (OIC). As such, we believe the provisions of subparagraph 2006.4a(1) apply in this case and that no specific comment by the Reviewing Officer was necessary.

c. Differing opinions offered by the Reviewing Officers of record are not grounds to invalidate the challenged fitness reports. Two separate Reporting Seniors rendered their evaluations; in both cases the Reviewing Officers offered their own appraisals, but did not concur and qualified their observations with amplifying comments. This is precisely as intended by references (b) and (c).

d. Neither the self-assessment by the petitioner of his own performance, nor the observations furnished by [REDACTED] (an officer with whom the petitioner was ranked on Report A) are sufficient to invalidate the detailed observations rendered by four different reporting officials.

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness reports should remain a part of [REDACTED]'s official military record.

5. The case is forwarded for final action.

[REDACTED]

Colonel, U.S. Marine Corps  
 Deputy Director  
 Personnel Management Division  
 Manpower and Reserve Affairs  
 Department  
 By direction of the Commandant  
 of the Marine Corps



DEPARTMENT OF THE NAVY  
HEADQUARTERS UNITED STATES MARINE CORPS  
3280 RUSSELL ROAD  
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0869-99

IN REPLY REFER TO:  
1610  
MMER/PERB  
7 JUN 2000

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
NAVAL RECORDS

Subj: ADDENDUM TO PERFORMANCE EVALUATION REVIEW BOARD (PERB)  
ADVISORY OPINION IN THE CASE OF [REDACTED]  
[REDACTED] USMCR

Ref: (a) [REDACTED]'s DD Form 149 of 5 Aug 99  
(b) PERB Advisory Opinion 1600 MMER/PERB of 2 Nov 99  
(c) MCO P1610.7D

1. During PERB's initial consideration [REDACTED] petition (reference (a)) in October 1999, we failed to address his request for modification to Item 18 of the fitness reports listed below. This Memorandum addresses that issue, considered by the PERB on 6 June 2000, and is an addendum to the Advisory Opinion contained in reference (b).

- a. 950426 to 950716 (CH)
- b. 950717 to 951031 (AN)
- c. 951101 to 960515 (CH)

Reference (c) is the performance evaluation directive governing the submission of all three reports.

2. The petitioner contends that the challenged reports are unfair, unjust, in error, and have prejudiced him due to the marks of "frequent" in Item 18 of those evaluations. To support his appeal for modification to reflect marks of "daily", the petitioner furnishes his own detailed statement and indicates that Defense Counsels currently assigned to Marine Corps Logistics Base, Albany, are receiving reports containing marks of "daily" in Item 18.

3. In its proceedings, the PERB concluded that all three reports are administratively correct and procedurally complete as written and filed. The following is offered as relevant:

a. Regardless of what other Reporting Seniors may be doing at this time, the fact remains that Lieutenant [REDACTED] and Jennings both considered their observation of the petitioner to be on a "frequent" basis. That was their judgmental opinion and

Subj: ADDENDUM TO PERFORMANCE EVALUATION REVIEW BOARD (PERB)  
ADVISORY OPINION IN THE CASE OF [REDACTED]  
[REDACTED] USMCR

the Board views it as keeping within the full spirit and intent of reference (c).

b. While the petitioner may believe that marks of "daily" in the three reports at issue would have added to their impact and may have "leveled the playing field", the Board does not find that to be a valid reason to effect the requested modifications. That fact notwithstanding, the Board offers the following observation. Of the 12 officers listed on the three fitness reports at issue, five are no longer on active duty (hence their records are not readily available), six have their fitness reports by Lieutenant Colonel [REDACTED] and [REDACTED] marked "frequent" in Item 18, and only one officer shows a fitness report with a mark of "daily" in Item 18. In the final analysis, it appears as though both Reporting Seniors were consistent in opting to assign marks of "frequent" to those officers serving as Defense Counsels, thereby dispelling the petitioner's argument that many of those with whom he competed reaped some type of benefit from serving in closer proximity.

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness reports should remain in [REDACTED]'s official military record, as configured.

[REDACTED]  
[REDACTED]  
[REDACTED]  
Chairperson, Performance  
Evaluation Review Board  
Personnel Management Division  
Manpower and Reserve Affairs  
Department  
By direction of the Commandant  
of the Marine Corps



DEPARTMENT OF THE NAVY  
HEADQUARTERS UNITED STATES MARINE CORPS  
3280 RUSSELL ROAD  
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6869-99

IN REPLY REFER TO:

1600  
MMA-4  
9 Dec 99

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
NAVAL RECORDS

Subj: BCNR PETITION FOR [REDACTED]  
[REDACTED] USMCR

Ref: (a) MMER Request for Advisory Opinion in the case of  
[REDACTED] 371102 USMCR  
[REDACTED] 9 Dec 99

1. Recommend disapproval of [REDACTED] request for removal of his failures of selection.
2. Per the reference, we reviewed [REDACTED] record and petition. He failed selection on the FY97 and FY98 USMC Major Selection Board. Subsequently, he unsuccessfully petitioned the Performance Evaluation Review Board (PERB) for removal of the Change of Reporting Senior fitness report of 911101 to 920420 and the Change of Reporting Senior fitness report of 920421 to 920713. After he was released from active duty he joined the Active Reserve and was promoted to Major. [REDACTED] requests the removal of his failures of selection.
3. In our opinion, the unfavorable PERB action does not reflect a material change in the record as it appeared before the FY97 and FY98 Board and his record received a substantially complete and fair evaluation by both Boards. Therefore, we recommend disapproval of [REDACTED] request for removal of his failures of selection.
4. Point of contact is [REDACTED]  
[REDACTED]

Lieutenant Colonel, U.S. Marine Corps  
Head, Officer Career Counseling and  
Evaluation Section  
Officer Assignment Branch  
Personnel Management Division



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IN REPLY REFER TO:

1600

MMOA-4

28 Apr 00

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
NAVAL RECORDS

Subj: BCNR PETITION FOR MAJOR M [REDACTED]  
[REDACTED] USMCR

Ref: (a) MMER Request for Advisory Opinion in the case of  
[REDACTED] crossing [REDACTED] SMCR  
of 24 Apr 00

1. Recommend disapproval of [REDACTED]'s request for removal  
of his failures of selection.

2. Per the reference, we reviewed [REDACTED]'s record and  
petition. He failed selection on the FY97 and FY98 USMC Major  
Selection Board. Subsequently, he unsuccessfully petitioned the  
Performance Evaluation Review Board (PERB) for modification of the  
Change of Reporting Senior fitness report of 950428 to 950716, the  
Annual fitness report of 950717 to 951031, and the Change of  
Reporting Senior fitness report of 951101 to 960515.

4. [REDACTED] is released from active duty after twice  
failing selection to major. He subsequently joined the Active  
Reserve and was promoted to major. [REDACTED] requests the  
removal of his failures of selection.

3. In our opinion, the unfavorable PERB action does not reflect a  
material change in the record as it appeared before the FY97 and  
FY98 Board and his record received a substantially complete and  
fair evaluation by both Boards. Therefore, we recommend  
disapproval of [REDACTED]'s request for removal of his  
failures of selection.

4. Point of contact is Lieut [REDACTED],  
(703) 224-9291.  
[REDACTED]

Lieutenant Colonel, U.S. Marine Corps  
Head, Officer Career Counseling and  
Evaluation Section  
Officer Assignment Branch  
Personnel Management Division